

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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DR. JUDY WOOD on behalf of the	§
UNITED STATES OF AMERICA	§
	§
Plaintiff,	§
	§
vs.	§
	§
SCIENCE APPLICATIONS	§
INTERNATIONAL CORP.; APPLIED	§
RESEARCH ASSOCIATES, INC.;	§
BOEING, NuSTATS; COMPUTER	§
AIDED ENGINEERING ASSOCIATES,	§
INC.; DATASOURCE, INC.;	§
GEOSTAATS, INC.; GILSANZ	§
MURRAY STEFICEK LLP; HUGHES	§
ASSOCIATES, INC.; AJMAL ABBASI;	§
EDUARDO KAUSEL; DAVID PARKS;	§
DAVID SHARP; DANIELE VENEZANO;	§
JOSEF VAN DYCK; KASPAR WILLIAM;	§
ROLF JENSEN & ASSOCIATES, INC.;	§
ROSENWASSER/GROSSMAN	§
CONSULTING ENGINEERS, P.C.;	§
SIMPSON GUMPERTZ & HEGER, INC.;	§
S. K. GHOSH ASSOCIATES, INC.;	§
SKIDMORE, OWINGS & MERRILL,	§
LLP; TENG & ASSOCIATES, INC.;	§
UNDERWRITERS LABORATORIES,	§
INC.; WISS, JANNEY, ELSTNER	§
ASSOCIATES, INC.; AMERICAN	§
AIRLINES; SILVERSTEIN PROPERTIES;	§
and UNITED AIRLINES,	§
	§
Defendants.	§
-----X	

Case No. 07CV3314

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS UNDERWRITERS  
LABORATORIES, INC.'S MOTION TO DISMISS THE COMPLAINT

### **PRELIMINARY STATEMENT**

Defendants, UNDERWRITERS LABORATORIES, INC. ("UL") move to dismiss the Complaint, pursuant to Fed. R. Civ. P. 12(b)(1) and 9(b), respectively, and hereby adopt and incorporate hering the arguments set forth in the motion papers submitted by co-defendant APPLIED RESEARCH ASSOCIATES, INC. ("ARA"). As more fully argued therein, plaintiff's claims are statutorily barred; plaintiff's fail to state a claim under the provisions of the False Claims Act and set sufficient facts to show the plausibility of her allegations; and plaintiff has failed to allege fraud with particularity. IN addition, as also argued therein, plaintiff lacks standing to assert common law claims on behalf of the United States Government. For all of these reasons, plaintiff's Complaint must be dismissed.

### **STATEMENT OF FACTS**

Defendants refer the Court to defendant ARA memorandum of law in support of its motion to dismiss the Complaint for a full recitation of the facts and applicable law.

In essence, plaintiff brings a claim under the False Claims Act, alleging that defendants manipulated and provided false information to the United States Government during the investigation of the events surrounding the collapse of the World Trade Center on September 11, 2001 conducted by the National Institute of Standards and Technology ("NIST"). (Declaration of Philip C. Semprevivo, dated February 20, 2008 ("Semprevivo Decl."), ¶3). However, the Complaint is devoid of any specific allegations against defendants UL. Semprevivo Decl., ¶6.

Defendant UL is a not-for-profit corporation in the State of Delaware, with its principal place of business located at 333 Pfingsten Road, Northbrook, Illinois. It engages in the examination and testing of representative samples of products, submitted to it by manufacturers in order to determine

whether the samples so submitted comply with Defendant, Underwriters Laboratories, Inc.'s applicable Standards and Requirements. Semprevivo Decl., ¶4. UL provided fire testing consulting services to NIST in relation to NIST's building and fire safety investigation of the September 11, 2001 WTC disaster. Semprevivo Decl., ¶5.

Other than general and conclusory allegations raised by plaintiff, there are no specific allegations against defendants UL concerning their actions and/or omissions from which liability may arise. Therefore, the Complaint should be dismissed against them.

### **ARGUMENT**

#### **POINT 1**

#### **DEFENDANTS UL JOIN DEFENDANT ARA'S MOTION TO DISMISS ON THE SAME GROUNDS SET FORTH THEREIN**

Dismissal of this action is proper because, as more fully argued in the papers filed by co-defendant ARA, the Court lacks subject matter jurisdiction over this lawsuit as a result of the statutory bars under §§ 3730(b)(5) and 3730 (e)(4) of the Federal Claims Act. Moreover, plaintiff's general and conclusory allegations, while not only implausible, also fail to state a claim under specific provisions and requirements set forth in the False Claims Act. Finally, plaintiff failed to plead his allegations of fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure. Finally, plaintiff lacks standing to assert state law claims on behalf of the United States Government. For these reasons, as more fully set forth in the motion papers submitted by co-defendant ARA that are adopted and incorporated herein, UL requests that the Complaint be dismissed.

**CONCLUSION**

For the foregoing reasons, as more fully set forth in the papers submitted by ARA in support of its motion to dismiss herein, it is respectfully requested that the Court dismiss the Complaint in its entirety, with prejudice and costs.

Dated: New York, New York  
February 20, 2008

**BIEDERMANN, REIF, HOENIG & RUFF, P.C.**

By: 

Philip C. Semprevivo, Jr. (PS 1526)

**Attorneys for Defendant**

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